

INITIAL STATEMENT OF REASONS

Introduction:

A lawsuit was filed on March 3, 2000, on behalf of two provider associations who wanted the California Department of Social Services (CDSS) to stop enforcing the Department's interpretation and application of the current dementia regulations pertaining to residential care facilities for the elderly (RCFEs). The lawsuit was dropped; however, the associations sponsored Senate Bill (SB) 1113 (Haynes, 2000) which would have changed the standard for imposing physical plant requirements. The Governor's veto message for this legislation instructed CDSS to work closely with advocacy and provider groups in a review of current dementia regulations to ensure the careful balance of the competing public and personal issues. In the process of working with these groups, Assembly Bill (AB) 1753 (Romero), Chapter 434, Statutes of 2000 was chaptered. This legislation imposes certain requirements for licensees who advertise special care, programming, and/or environments for residents with dementia. Licensees are required to meet specified training requirements for direct care staff and to disclose to the licensing agency the specific features of the facility in its plan of operation and provide it to the public upon request.

CDSS' Community Care Licensing Division (CCLD) held dementia care policy forums on May 31, 2001 and September 18, 2001. The forums included a diverse group of participants representing family members and residents; client advocates; small single-facility providers; large multi-facility providers; legislative staff and medical professionals and researchers. Copies of the first draft of the dementia regulations were sent to the participants on February 28, 2002, for their comments. CCLD staff in the Adult and Senior Care Policy Section reviewed the comments received from the participants and made revisions to the draft regulations. The dementia care policy forum participants are referred to as "workgroup" in the Factual Basis of the statement of reasons.

CCLD staff also reviewed other states' assisted living regulations and a report written by Robert Mollica entitled State Assisted Living Policy: 2000, which is an analysis of various states' policies. The report was prepared under a grant (RRF Grant #99-307) from the Retirement Research Foundation in Chicago, Illinois. (These resources are being submitted for the rulemaking file as an addendum to the Statement of Reasons.)

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary Introduction:

Section 87101(d)(4)Specific Purpose:

The specific purpose of this amendment is to expand the definition of "dementia."

Factual Basis:

This amendment is necessary because the present definition for “dementia” does not give enough information to clearly explain what dementia is nor distinguish it from other health conditions. Health and Safety Code Sections 1569.15(m), 1569.626, and 1569.627 added more requirements for licensees of RCFEs who care for residents with dementia if the licensee advertises dementia special care, programming, and/or environments. The definition is provided in part by the workgroup and in part (page 30) by the National Academy for State Health Policy’s State Assisted Living Policy: 2000, by Robert Mollica.

Section 87101(d)(7)

Specific Purpose:

The specific purpose of adopting this section is to define “direct care staff”.

Factual Basis:

This section is necessary because the term “direct care staff” is used throughout the RCFE regulations and has never been defined. Health and Safety Code Section 1569.626 uses the term and states that all RCFEs that advertise special care, programming, and/or environments for persons with dementia shall meet certain training requirements for all direct care staff. The term has already been defined in the licensing category for Residential Care Facilities for the Chronically Ill (RCFCI) in Title 22, Division 6, Chapter 8.5, Section 87801(d)(7). The definition for “direct care staff” in the RCFE regulations is similar to the definition in the RCFCI regulations, but more detailed.

Section 87101(d)(8) through (10) (Renumbered)

Specific Purpose/Factual Basis:

Sections 87101(d)(8) through (d)(10) are being renumbered from Sections 87101(d)(7) through (d)(9) for numerical consistency.

Sections 87101(m)(1) through (m)(1)(E)

Specific Purpose:

The specific purpose of adopting these sections is to define “mild cognitive impairment”. This condition is mentioned in Section 87724(a), where reference is made back to the definition section.

Factual Basis:

These sections are necessary because “mild cognitive impairment” is a condition not previously referred to in Title 22, Division 6, Chapter 8, Residential Care Facilities for the Elderly regulations. The new regulations in Section 87724(a) cross-reference this term to the definition’s section. Licensees need to have knowledge of the term because Section

87724, Care of Persons with Dementia, specifically applies to residents diagnosed with dementia and does not apply to licensees who accept or retain residents with a diagnosis of mild cognitive impairment. This definition will allow a distinction to be made between dementia and mild cognitive impairment. (Suggestions for a definition came from two workgroup participants including an R.N./M.S.N., who is clinical manager of an Alzheimer's Disease center, and a physician who oversees an RCFE with residents who have dementia.)

Section 87111(a)

Specific Purpose:

The specific purpose of amending this section is to reorganize information and to include the Internet as an advertising option. The Health and Safety Code sections were reversed.

Factual Basis:

This section is necessary to clarify and include a now commonly used medium of advertising. The Health and Safety Code sections were reversed to be in the correct order for consistency with other citations.

Section 87222(a)(6)

Specific Purpose/Factual Basis:

The specific purpose of this section is to correct a grammatical error. This amendment is necessary for clarity and ease of use.

Sections 87222(a)(7) through (a)(7)(C)

Specific Purpose:

The specific purpose of these sections is to clarify the requirements for a building sketch. Existing requirements in Section 87222(a)(7) were reorganized and separated into Sections 87222(a)(7) through (a)(7)(C).

Factual Basis:

These amendments are necessary to more clearly state the components of the required building sketch.

Section 87222(b)

Specific Purpose:

The specific purpose of adopting this section is to add reference to additional information required in the plan of operation under specific conditions as specified in Section 87725(a)(3).

Factual Basis:

This section is necessary to add a cross-reference to new requirements specified in Section 87725(a)(3) for clarity and ease of use.

Section 87222(c)

Specific Purpose:

The specific purpose of adopting this section is to require a licensee who accepts or retains residents diagnosed by a physician to have dementia, and/or determined by a physician to be nonambulatory as a result of mental confusion, to include additional information in the plan of operation as specified in Section 87724(b).

Factual Basis:

This section is necessary to add a cross-reference to new requirements specified in Section 87724(b) for clarity and ease of use.

Section 87565(f)

Specific Purpose:

The specific purpose of adopting this section is to cross-reference additional information regarding personnel training required under certain conditions, as specified in Section 87724(c)(3).

Factual Basis:

This section is necessary to add a cross-reference for clarity and ease of use.

Section 87565(g)

Specific Purpose:

The specific purpose of adopting this section is to cross-reference additional training required under certain conditions as specified in Section 87725.1, Training Requirements if Advertising Dementia Special Care, Programming, and/or Environments.

Factual Basis:

This section is necessary to cross-reference new training requirements for clarity and ease of use.

Sections 87565(h) through (l) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of these sections is to renumber Sections 87565(f) through (j) to Sections 87565(h) through (l) for numerical consistency.

Section 87566(a)

Specific Purpose:

The specific purpose of this amendment is to remove language that specifies that employment application forms “shall be available to the Department or licensing agency for review”. The wording “on each employee” is reworded to “for each employee” and this wording has been relocated. The word “and” is removed. The language “in the personnel records” is added.

Factual Basis:

This section is necessary to remove the language that specifies employment application forms shall be available to the Department or licensing agency for review because this former language should apply to all personnel records, not just the employment application form. Therefore, Section 87566(h) is added to apply to all personnel records and it provides additional clarity. The entire Section 87566 is about Personnel Records and different records are described. Language is reworded and relocated for clarity. The word “and” is removed because it is no longer necessary. The language “in the personnel records” is added for clarity.

Section 87566(b)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to maintain specific details of required staff training in the personnel records.

Factual Basis:

This section is necessary to ensure that a record of mandatory training is maintained. This recorded information is essential to provide the licensing agency with verification that staff have completed training as required.

Section 87566(b)(1)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to be responsible for ensuring that the personnel record includes verification of the training specified in Section 87724(c)(3) if the licensee is caring for residents with dementia and Section 87725.1 (if applicable) if the licensee is advertising dementia special care, programming, and/or environments. The title of Section 87725.1 is added.

Factual Basis:

This section is necessary to clearly state that the licensee is responsible for ensuring that the personnel records include verification of the training specified in Section 87724(c)(3) if the licensee is caring for residents with dementia, and if applicable, Section 87725.1 if the licensee is advertising dementia special care, programming, and/or environments. This information is necessary so that the licensing agency, during a facility visit, can verify that the training requirements have been met. The title of Section 87725.1 is added for clarity.

Sections 87566(c) through (g) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of these sections is to renumber Sections 87566(b) through (f) to Sections 87566(c) through (g) for numerical consistency.

Section 87566(h)

Specific Purpose:

The specific purpose of this section is to specify that the licensing agency shall be entitled to inspect, audit, remove if necessary, and copy the personnel records upon demand during normal business hours.

Factual Basis:

This section is necessary to clarify the licensing agency's access to personnel records necessary to carry out the functions of the licensing program. This language is consistent with Section 87570(e) pertaining to resident records. The proposed language provides clarity.

Section 87569(b)(5)

Specific Purpose:

The specific purpose of this section is to differentiate on the medical assessment between a non-ambulatory status due to a physical condition, a non-ambulatory status due to a mental condition or a non-ambulatory status due to both. The word "by" is changed to "in". Also, the cross-reference to Section 87101a.(4) is corrected to Section 87101(a)(6).

Factual Basis:

This section is necessary to clarify that the medical assessment shall indicate the source of the non-ambulatory status for the Department to determine if the physical plant can accommodate the resident. This information will also be used to determine what procedures should be in place to protect the resident's health and safety. The word "by" is changed to "in" for consistency. The cross-reference is corrected for clarity.

Section 87570(b)(6)

Specific Purpose/Factual Basis:

The specific purpose of this section is to correct a cross-reference. This section is necessary for clarity.

Section 87570(b)(15) through (b)(15)(F)

Specific Purpose:

The specific purpose of adopting these sections is to require documents and information required in Section 87583, Pre-Admission Appraisal – General; Section 87584, Functional Capabilities; Section 87585, Mental Condition; Section 87586, Social Factors; Section 87587, Reappraisals; and Section 87588, Documentation and Support, to be maintained in the resident's individual record.

Factual Basis:

These sections are necessary to include specific required assessment information to be maintained as part of the resident's record for consistency and availability for review by the Department.

Section 87582(b)(4)

Specific Purpose:

The specific purpose of this section is to allow persons with varying degrees of dementia to be received into or retained by an RCFE.

Factual Basis:

A work group consisting of resident advocates, provider groups and interested parties convened twice to assist the Department in re-writing regulations for licensees who accept and/or retain residents with dementia. This section is amended for clarity and to allow for persons with other than mild problems to be accepted and retained in an RCFE.

Section 87582(c)(3)

Specific Purpose:

The specific purpose of this amendment is to repeal the prohibition against accepting a resident who requires more care and supervision than other residents in care, and to make a grammatical correction.

Factual Basis:

This amendment is necessary for clarity. Residents frequently have varying requirements for care and supervision. The licensee is required to provide care and supervision based on individual need for service. The grammatical correction is being made for clarity.

Sections 87582(c)(4) through (c)(6)

Specific Purpose:

The specific purpose of these sections is to make grammatical changes and to clarify that ongoing behavior that would upset the general resident group, and not dementia or a mental disorder, can prohibit acceptance and/or retention. The prohibition against accepting or retaining a resident who would require a greater amount of care and supervision than other residents in the facility is repealed. The phrase "The resident" is added. Previous Section 87582(c)(4) is split into two sections. Section 87582(c)(5) is renumbered to Section 87582(c)(6). The word "which" is changed to "that".

Factual Basis:

These amendments are necessary to clearly state the intent of the regulations. Residents frequently have varying requirements for care and supervision. The licensee is required to provide care and supervision based on a resident's individual need for service. Ongoing behavior that upsets the general resident group and may prohibit a resident from being accepted and/or retained is not necessarily due to dementia or a mental condition. Section 87582(c)(4) is split into Sections 87582(c)(4) and (c)(5) for clarity and ease of use. Section 87582(c)(5) is renumbered to Section 87582(c)(6) for numerical consistency. "The resident" is added for clarity and a grammatical change of "which" to "that" is made.

Section 87591

Specific Purpose:

The specific purpose of this amendment is to specify that there is both a mental and a physical component to health conditions. The regulation is reworded to make it clear that the licensee shall “ensure that residents are” regularly observed rather than making it sound like the licensee is the only one observing the residents. For this same reason, the wording “the licensee shall provide” is removed and replaced with appropriate assistance “is provided”. The requirement for documentation and bringing changes to the attention of the physician is reworded so that the licensee is not the only one required to do this. The wording “which might require a change in the existing level of service, or possible discharge, or transfer to another type of facility” is removed.

Factual Basis:

These amendments are necessary because the licensee is responsible for ensuring that the needs of the resident are met. However, the licensee may direct others in the facility, such as direct care staff, to observe residents, provide appropriate assistance, and document changes and bring these changes to the attention of the resident’s physician and the resident’s responsible person, if any. Direct care staff are required to have had the appropriate training to regularly observe residents for changes. "Health condition" is further defined to include conditions of a cognitive and/or physical nature. The wording “which might require a change in the existing level of service, or possible discharge, or transfer to another type of facility” is removed because it goes beyond observing the resident, which is the subject matter of Section 87591. This information is covered in other sections and is not relevant here.

Section 87593(d)(6)

Specific Purpose:

The specific purpose of this amendment is to specify that the licensee shall not accept an individual as an emergency placement from Adult Protective Services whose primary need for care and supervision results from ongoing behavior that would upset the general resident group or who cannot generally benefit from the program of services available in the facility. Wording is eliminated that referenced dementia or a mental disorder as being the primary need for care and supervision. A new section number is provided for the new proposed language in that section. Language is eliminated in Section 87593(e) that referenced the dementia waiver.

Factual Basis:

This amendment is necessary to be consistent with the amendments proposed in Sections 87582(c)(4) and 87582(c)(5), which were originally together under one section number. Ongoing behavior that upsets the general resident group and may prohibit a resident from being accepted and/or retained in a facility is not necessarily due to dementia or a mental disorder. Exception language is eliminated because the Department is proposing to remove the dementia waiver in this regulation package.

Sections 87593(e) and (e)(1)

Specific Purpose:

The specific purpose of these amendments is to change the word “must” to “shall” and to add the title following Section 87724. The wording “and ensure the following criterion is met, including but not limited to the following” is changed to “that include, but are not limited to, the following”. Language is added that specifies that the facility has a nonambulatory fire clearance for each room that will be used to accommodate a resident with dementia who is nonambulatory. The wording “are considered” is replaced by “is”. A reference is provided to show where to find information in the regulations on a nonambulatory fire clearance. Language is removed that describes nonambulatory. Language pertaining to a dementia waiver is deleted.

Factual Basis:

These amendments are necessary to be consistent with the proposed language in Section 87724(c)(1), removing the requirement for a dementia waiver. For additional clarity and for the health and safety of the residents, Section 87593(e)(1) provides language on a nonambulatory fire clearance. Health and Safety Code Section 1569.71 specifies that the Department must uphold regulations for nonambulatory persons that ensure resident safety, but must also provide flexibility to allow residents to remain in the least restrictive environment. Reference is made to Section 87724(c)(1) so that all the language in that section did not have to be repeated. Language is deleted that describes nonambulatory because it is no longer accurate or consistent with the proposed language described in Section 87724(c)(1). In addition, the word “must” is changed to “shall” to be consistent with the other regulations in Title 22, Division 6, Chapter 8. The title of Section 87724 is added for clarity. Grammatical changes are made for clarity.

Section 87724(a)

Specific Purpose:

The specific purpose of adopting this section is to clarify that Section 87724 pertains only to licensees who accept or retain residents diagnosed by a physician to have dementia and/or the residents are determined by a physician to be nonambulatory as a result of mental confusion. This section does not apply to licensees who accept or retain residents with a diagnosis of mild cognitive impairment. A section number is provided.

Factual Basis:

This section is necessary to clarify that licensees who accept and/or retain residents, under specific conditions, must comply with the requirements of Section 87724. Also, this section exempts from these requirements, residents with a diagnosis of mild cognitive impairment, which is defined in Section 87101(m)(1). The section number is provided for ease of use.

Section 87724(a)(5)(G) (Repealed)

Specific Purpose/Factual Basis:

Section 87724(a)(5)(G) is repealed. This requirement is addressed in Section 87691(a) and is not specific to care of persons with dementia.

Section 87724(a)(6) (Repealed)

Specific Purpose/Factual Basis:

This section is being repealed. The requirements in this section apply to all residents in RCFEs and are more appropriately placed under Section 87570, Resident Records.

Section 87724(b) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the statement that the licensee does not need the Department's approval to accept or retain a resident with dementia who is determined to be ambulatory.

Factual Basis:

This repeal is necessary because the Department is removing the requirement for a dementia waiver.

Section 87724(b) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize information. Section 87222 contains the requirement for the facility to have a written plan of operation; language in this section that restates that requirement is unnecessary and therefore removed. Section 87724(a)(3) is renumbered to Section 87724(b). These amendments are necessary for clarification and ease of use.

Section 87724(b)(1) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is a grammatical change, and to expand the notification requirement to include responsible persons. Section 87724(b)(1) is renumbered from Section (c)(1)(F).

Factual Basis:

This amendment is necessary for clarity and consistency. The work group proposed that responsible persons who are non-family members should be notified of a change in a resident's condition when such notification has been requested.

Section 87724(b)(2)

Specific Purpose:

The specific purpose of adopting this section is to require that safety measures to address health and safety risks commonly associated with dementia are included in the plan of operation.

Factual Basis:

This section is necessary to ensure the health and safety of residents with dementia. Wandering, aggressive behavior, and ingestion of toxic material were identified by the work group as areas of great concern.

Sections 87724(c) through (c)(1)(C), (c)(1)(E) and (c)(1)(H) (Repealed)

Specific Purpose:

The specific purpose of these sections is to repeal the requirement for the licensee to obtain the Department's approval prior to accepting or retaining a resident with dementia who is determined to be non-ambulatory and to repeal the description of the documentation necessary to obtain the waiver.

Factual Basis:

These repeals are necessary because the Department proposes to eliminate the dementia waiver requirement. Sections 87724(c)(1)(D), (c)(1)(F), and (c)(1)(G) are moved to other locations in Section 87724 because they are necessary components for care of persons with dementia even though there is language proposed to delete the dementia waiver.

Section 87724(c) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this section is a grammatical change to more clearly state the responsibility of the licensee who accepts and retains residents with dementia. Section 87724(a) is renumbered to Section 87724(c) for clarity and ease of use.

Section 87724(c)(1) (Renumbered)

Specific Purpose:

The specific purpose of this section is to more clearly state when it is necessary that a resident with dementia must have a room with a nonambulatory fire clearance. The word “which” was changed to “that” and unnecessary information is repealed.

Factual Basis:

This amendment is necessary for clarity and ease of use. Section 87724(c)(1) is renumbered from Section 87724(a)(2) for numerical consistency. A grammatical change is made and unnecessary wording is repealed. The cross-reference to Section 87220 is repealed because it is not necessary to get the meaning across. Instead of referring to the cross-reference Section 87101n.(2) and the Health and Safety Code, new language is added that defines the word nonambulatory within the text itself.

Section 87724(c)(2) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this section is to remove the language "Ensuring the development of a." The requirement to develop a disaster and mass casualty plan is addressed in Section 87223. Information is reorganized for clarity and ease of use. Section 87724(a)(7) is renumbered to Section 87724(c)(2) for clarity.

Section 87724(c)(3) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize the information and to change the term "facility staff" to "direct care staff" for clarity and ease of use. The term "facility staff" is replaced with "direct care" staff because direct care staff is defined as staff directly responsible for providing resident care. Section 87724(a)(4) is renumbered in part to Section 87724(c)(3) for clarity and consistency. The language “shall be” is proposed for consistency with the language of other regulations. Section 87565(d) (formerly Section 87565(c)) is referred to because it explains what on-the-job training encompasses. The areas of training under this Section 87724(c)(3) are different, however.

Section 87724(c)(3)(A) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to remove the reference to training in identifying and reporting resident abuse and neglect and to require training in hydration and skin care. Section 87724(a)(4) is renumbered in part to Section 87724(c)(3)(A).

Factual Basis:

This amendment is necessary because identifying and reporting resident abuse and neglect is not specific to dementia care and is covered in Section 87561. The work group identified hydration and skin care as important areas staff should be trained in. Re-numeration is for consistency and ease of use.

Section 87724(c)(3)(B)

Specific Purpose:

The specific purpose of adopting this section is to expand required training topics to include the recognition of signs and symptoms related to dementia.

Factual Basis:

This section is necessary to ensure that direct care staff are aware of functional aspects related to dementia so that they are better able to protect residents' health and safety and can become aware of what to look for as the dementia progresses.

Section 87724(c)(3)(C) (Renumbered in part)

Specific Purpose/Factual Basis:

The specific purpose of this section is to change the language of one of the training components from "behavioral effects of medications on residents with dementia" to "effects of medications commonly used for dementia." The revised subject matter is more general than having a focus on behavioral effects of medications. Section 87725.1(a)(2)(A)1. requires training topics to be more specific since these topics are required for direct care staff who work in facilities where the licensee is advertising dementia special care. Information is reorganized for clarity and ease of use. Section 87724(a)(4) is renumbered in part to Section 87724(c)(3)(C) for consistency.

Section 87724(c)(4) Renumbered)

Specific Purpose:

The specific purpose of this amendment is to change language from "staffing is adequate to provide supervision for residents with dementia while meeting the needs of all facility residents" to "adequate number of direct care staff to support each resident's physical,

social, emotional, safety and health care needs as identified in the current appraisal." Language is added to identify areas of the resident's appraisal and to reorganize information for ease of use. Reference to Section 87565 and to meeting the needs of all facility residents is removed. Section 87724 (a)(1) is renumbered to Section 87724(c)(4) for clarity.

Factual Basis:

This section is necessary to clearly state that direct care staffing must be sufficient to provide for each resident's need for care and supervision as identified on each resident's appraisal. Reference to Section 87565 and to meeting the needs of all facility residents is removed since Section 87724 applies only to residents with dementia. Re-numeration is necessary for consistency.

Section 87724(c)(4)(A) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the phrase "requirements specified in" for clarification. The title of Section 87581 is added for clarity and ease of use. Section 87724(a)(1)(A) is renumbered to Section 87724(c)(4)(A) for numerical consistency.

Section 87724(c)(5) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to add the phrase "as specified in Section 87569, Medical Assessment" and to reorganize information. The phrase "with dementia shall have" is removed. Section 87724(a)(6)(A) is renumbered to Section 87724(c)(5).

Factual Basis:

This section is amended for clarity and ease of use. The phrase "as specified in Section 87569, Medical Assessment" provides a cross-reference to clarify what the medical assessment must contain and who can do the assessment. Since Section 87724 refers only to residents with dementia, the phrase "with dementia shall have" is unnecessary and is repealed. Re-numeration is for consistency.

Section 87724(c)(5)(A) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to repeal language referring to resident relocation. Section 87724(c)(5)(A) is renumbered from Section 87724(a)(6)(B).

Factual Basis:

This section is amended for clarity and ease of use. Resident relocation is not particular to residents with dementia and is addressed in Section 87589, Eviction Procedures. This section is renumbered for consistency.

Section 87724(c)(6)

Specific Purpose:

The specific purpose of adopting this section is to restate the requirement to conduct appraisals on an ongoing basis, as specified in Section 87587.

Factual Basis:

This section is necessary to ensure that the care and supervision needs of residents with dementia are being met. One aspect of the dementing illnesses is the unpredictable and sometimes sudden increase or decrease in need for care and supervision. These changes can be permanent or oscillate back and forth creating what is often referred to as “a good day” or “a bad day.” The workgroup suggested that an ongoing assessment of the resident’s needs should be clearly stated.

Section 87724(c)(7) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to make a grammatical change and to allow facility-wide practices to be optional.

Factual Basis:

This amendment is necessary to allow for situations in which facility-wide practices are not used to minimize the need for psychoactive medications. The workgroup suggested that this requirement is problematic when facility-wide practices are not in place for the purpose of reducing the need for medications and the resident's physician is not aware of facility-wide practices. This amendment provides clarity and ease of use. Section 87724(c)(7) is renumbered from Section 87724(c)(1)(G) for consistency. A grammatical change is made for clarity.

Section 87724(c)(8) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to make a grammatical change. Section 87724(c)(8) is renumbered from Section 87724(c)(1)(D). This amendment is necessary for clarity and ease of use.

Section 87724(d) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize information from Sections 87724(a)(5) and (a)(5)(A) and to add the title of Section 87691 for ease of use. Section 87724(d) is renumbered from Sections 87724(a)(5) and (a)(5)(A) for clarity. Wording changes were made for clarity. For more accuracy, “of the physical plant” was deleted and replaced with “modifications”. Safety modifications need to be made to ensure that various items in the facility are inaccessible to residents in order to protect their health and safety.

Section 87724(e) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to make a grammatical change and to require the facility to be operated in compliance with state and local building codes. Section 87724(e) is renumbered from Section (a)(5)(B).

Factual Basis:

This amendment is necessary to strengthen the requirement for bodies of water to be fenced in a manner to best provide for the health and safety of residents. Re-numeration is for consistency. The grammatical correction is for clarity and consistency.

Sections 87724(f) and (f)(1) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of these amendments is to reorganize existing requirements for clarity and ease of use. Parentheses are put around the “s” on resident(s) because there may only be one resident that this section applies to. Sections 87724(f) and (f)(1) are renumbered from Section 87724(a)(5)(C).

Section 87724(f)(2) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to reorganize existing requirements for clarity and ease of use and to delete the reference to Section 87575. Nutritional supplements, vitamins, gardening supplies and alcohol are added as items that can present a health and safety risk and must be stored inaccessible to residents with dementia. The word "certain" is added before "plants." Section 87724(f)(2) is renumbered from Section 87724(a)(5)(d).

Factual Basis:

This amendment is necessary to delete an unnecessary reference to Section 87575, which provides no clarity since it talks generally about medication usage and centrally storing medications. The addition of nutritional supplements, vitamins, gardening supplies and alcohol is to require those items to be stored inaccessible to residents. The word "certain" is added before "plants" because not all plants are toxic. "All" is removed because, as shown in Section 87724(g), some potentially toxic substances that are grooming and hygiene items may be kept unless there is evidence to substantiate that the resident cannot safely manage the items. Re-numeration is for consistency and ease of use.

Section 87724(g)

Specific Purpose:

The specific purpose of adopting this section is to allow residents to keep personal hygiene and grooming items in their own possession unless it presents a health and safety risk.

Factual Basis:

The Department is adding this section to ensure dignity is provided to residents by allowing them to continue to have access to products used for grooming and hygiene. The work group suggested that residents keep personal grooming and hygiene products that do not present any health and safety risk. However, criteria was spelled out in Sections 87724(g)(1) through (g)(3) that can be used as evidence to substantiate when a resident cannot safely manage these items, resulting in a health and safety issue, whereby the items should be removed.

Section 87724(g)(1)

Specific Purpose:

The specific purpose of adopting this section is to state that documentation from the resident's physician may be used as evidence that the resident is at risk if allowed to self-store grooming and hygiene items.

Factual Basis:

The Department is adding this section to clarify what evidence can be included in the determination of a health and safety risk for the self storage of personal grooming and hygiene products.

Section 87724(g)(2)

Specific Purpose:

The specific purpose of adopting this section is to strengthen and restate the existing requirement for ongoing assessment of the residents' care and supervision needs.

Factual Basis:

This section is necessary to clarify the responsibility of the licensee to continually assess the resident's supervision needs to ensure that access to grooming and personal hygiene supplies do not pose a health and safety risk.

Section 87724(g)(3)

Specific Purpose:

The specific purpose of adopting this section is to add the requirement for the licensee to develop and maintain a written plan to ensure that a resident's grooming and hygiene supplies that are stored accessible do not pose a health and safety risk to other residents.

Factual Basis:

This section is necessary to protect the health and safety of residents when grooming and hygiene products for certain residents are stored accessible.

Section 87724(h) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to specify that outdoor facility space used for resident recreation and leisure must be enclosed and to add walls to the options for enclosure. The word "yards" is repealed. Section 87724(h) is renumbered from Section 87724(a)(5)(E).

Factual Basis:

This amendment is necessary for clarification and to allow for outside areas used for resident recreation and leisure, such as courtyards that are surrounded by walls, to meet the requirement of an enclosed outdoor facility space. The amendment is necessary to clarify that the licensee does not have to enclose all outdoor areas, but only those used for a resident's recreation and leisure. The term "yard" is too general. The word "enclosed" clarifies there should be no break in the fencing surrounding the recreation area. These amendments are necessary to protect the safety of residents. Re-numeration is necessary for consistency and ease of use.

Section 87724(i) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to change the term "authorized representative" to "conservator," to add the language "the resident's rights as specified in" to clarify the content of Section 87572, and to add the title of Section 87572. Section 87724(i) is renumbered from Section 87724(d).

Factual Basis:

This amendment is necessary to correct the category of persons who can approve the use of an egress alert device. An authorized representative cannot give consent for a resident unless that person is also the resident's conservator. The language "the resident's rights as specified in" is added to clarify the content of Section 87572. The title of Section 87572 is added for clarity. Re-numeration is for consistency and ease of use.

Section 87724(j) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to remove the language "Exterior doors", "include an operational bell/buzzer or other", "to alert", and "when the door is opened" and to reorganize information. Language is proposed to specify "The licensee" will have an "alert feature to monitor exits, if exiting presents a hazard to any resident". The language "or other" is also added. Section 87724(j) is renumbered from 87724(a)(5)(F).

Factual Basis:

This amendment is necessary to allow for various types of egress alert features that licensees may have in place and to clarify that this requirement applies only if exiting presents a hazard to any resident. "The licensee" is added because that individual is responsible for ensuring this regulation is followed. Re-numeration is necessary for consistency.

Section 87724(k) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this section is to renumber Section 87724(e) to Section 87724(k) for numerical consistency.

Section 87724(k)(1) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to change the term "Department" to "licensing agency" for consistency and ease of use. Section 87724(k)(1) is renumbered from Section 87724(e)(1) for numerical consistency.

Section 87724(k)(2) (Renumbered)

Specific Purpose/Factual Basis:

Section 87724(k)(2) is renumbered from Section 87724(e)(2) for consistency in numeration.

Section 87724(k)(3) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to repeal the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" and to replace the term "facility" staff with "direct care" staff. The phrase "who provide or supervise resident care and supervision" is also repealed. Section 87724(k)(3) is renumbered from Section 87723(e)(3).

Factual Basis:

This section is necessary because the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" is an unnecessary cross-reference since the plan is covered in proposed Section 87724(c)(2). "Facility" staff is replaced with "direct care" staff because direct care staff is defined as staff directly responsible for providing direct care and/or direct assistance with services to the residents. The phrase "who provide or supervise resident care and supervision" is repealed because of redundancy. Section 87724(k)(3) is renumbered from Section 87723(e)(3) for consistency.

Section 87724(k)(4)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the title of Section 87572 for clarity and to repeal the phrase "with dementia" since Section 87724 applies only to residents with dementia. Section 87724(e)(4) is renumbered to Section 87724(k)(4) for numerical consistency.

Section 87724(k)(5)

Specific Purpose:

The specific purpose of this amendment is to replace the language "an egress delay" with "redirection" and to add the phrase "with staff supervision". Section 87724(e)(5) is renumbered to Section 87724(k)(5).

Factual Basis:

This amendment is necessary to clarify that if a resident attempts to leave a facility that has a delayed egress device and redirection is not effective, the resident must be permitted to leave the facility and must be supervised by staff to protect his/her health and safety. Section 87724(e)(5) is renumbered to Section 87724(k)(5) for numerical consistency.

Section 87724(k)(6)

Specific Purpose:

The specific purpose of this amendment is to add the title of Section 87572, to delete the term "with dementia when" and to make a grammatical correction. Section 87724(k)(6) is renumbered from Section 87724(e)(6).

Factual Basis:

This amendment is necessary for clarity, consistency and ease of use. Since Section 87724 refers only to residents with dementia, the phrase "with dementia" is unnecessary and is repealed. A grammatical change is made by repealing "when" and adding "if", and the title of Section 87572 is added for clarity. Section 87724(k)(6) is renumbered from Section 87724(e)(6) for numerical consistency.

Section 87724(k)(7) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is reorganization of information and to add clarification that unsupervised residents wandering away from the facility must be reported to the licensing agency. This section also changes the term "representative" to "person" and changes the term "Department" to "licensing agency" for consistency and ease of use. Since Section 87724 concerns persons with dementia, the language "with dementia" is removed because it is redundant and the rest of the sentence is reorganized for clarity. The language "the incident" is proposed for clarity. Section 87724(k)(7) is renumbered from Section 87724(e)(7) for numerical consistency.

Section 87724(k)(8) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to delete the term "with dementia". Section 87724(k)(8) is renumbered from Section 87724(e)(8).

Factual Basis:

This amendment is necessary for consistency and ease of use. Since Section 87724 refers only to residents with dementia, the phrase "with dementia" is unnecessary and is repealed. Section 87724(k)(8) is renumbered from Section 87724(e)(8) for numerical consistency.

Section 87724(k)(9)

Specific Purpose/Factual Basis:

Section 87724(k)(9) is renumbered from Section 87724(e)(9) for consistency in numeration.

Section 87724(l) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this section is to make a grammatical correction for clarity. Section 87724(l) is renumbered from Section 87724(f) for consistency in numeration.

Section 87724(l)(1) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to change the terms “Department” to “licensing agency” and “his/her” to “their” for consistency and ease of use. “The licensee” is changed to “Licensees” to be grammatically correct with the change of “his/her” to “their”. Section 87724(l)(1) is renumbered from Section 87724(f)(1) for numerical consistency.

Section 87724(l)(2) (Renumbered)

Specific Purpose/Factual Basis:

Section 87724(l)(2) is renumbered from Section 87724(f)(2) for consistency in numeration.

Section 87724(f)(3)

Specific Purpose:

The specific purpose of this section is to repeal the reference to the requirement for the dementia waiver when accepting residents with dementia.

Factual Basis:

The Department has determined that licensees who accept or retain residents with dementia do not need to obtain a waiver to assure that the residents’ health and safety are protected. There are already safeguards in place because Section 87724 regulates the care of persons with dementia and proposed Sections 87725 and 87725.1 add additional safeguards if a facility advertises dementia special care. Also, proposed Section 87582(c)(4) no longer specifies “dementia”. The work group suggested that residents with dementia experience unnecessary evictions from their residential settings when they acquire a diagnosis of dementia and the facility does not have and/or does not want to apply for a dementia waiver.

Section 87724(l)(3) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to repeal the language "Pursuant to Section 87116." Section 87116 addresses the allowance for waivers and exceptions, but this added clarification is not necessary since the section already specifies that there needs to be a

waiver from Section 87572(a)(6) and too many cross-references are confusing. Section 87724(f)(4) is renumbered to Section 87724(l)(3) for numerical consistency.

Section 87724(l)(3)(A)

Specific Purpose:

The specific purpose of adopting this section is to add the requirement that facility staff shall attempt to redirect any unaccompanied resident(s) leaving the facility when there are locked exterior doors or perimeter fence gates.

Factual Basis:

This amendment is necessary to create the least restrictive environment through redirection when locked exterior doors or perimeter fence gates are utilized.

Section 87724(l)(4) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement for the licensee to send to the Department, within five working days of each resident's admission, a copy of the conservator's written consent or a statement signed by a non-conserved resident regarding voluntary admission into a facility even though there are exterior door locks or locked perimeter fencing. Section 87724(l)(4) is renumbered from Section 87724(f)(5).

Factual Basis:

The Department has determined that there is no additional protection of the resident's health and safety afforded by sending a copy of the signed consent statement to the licensing office (Department). Reviewing the files at the facility during a licensing visit will provide the necessary verification that the requirement of this section is met. Section 87724(l)(4) is renumbered from Section 87724(f)(5) for numerical consistency.

Section 87724(l)(4)(A) (Renumbered)

Specific Purpose/Factual Basis:

Section 87724(l)(4)(A) is renumbered from Section 87724(f)(5)(A) for consistency in numeration.

Section 87724(l)(4)(B) (Renumbered)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to reorganize information for clarity and ease of use. The word "states" is added for clarity. Section 87724(l)(4)(B) is renumbered from Section 87724(f)(5)(B) for numerical consistency.

Sections 87724(l)(5) through (l)(7) (Renumbered)

Specific Purpose/Factual Basis:

Sections 87724(l)(5) through (l)(7) are renumbered from Sections 87724(f)(6) through (f)(8) for consistency in numeration.

Section 87724(l)(8) (Renumbered)

Specific Purpose:

The specific purpose of this amendment is to repeal the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" and to replace the term "facility" staff with "direct care" staff. The phrase "who provide or supervise resident care and supervision" is also repealed. Section 87724(f)(9) is renumbered to Section 87724(l)(8).

Factual Basis:

This section is necessary because the language "Following the disaster and mass casualty plan specified in Section 87724(a)(7)" is an unnecessary cross-reference since the plan is covered in proposed Section 87724(c)(2). "Facility" staff is replaced with "direct care" staff because direct care staff is defined as staff directly responsible for providing direct care and/or direct assistance with services to the residents. The phrase "who provide or supervise resident care and supervision" is repealed to avoid redundancy. Section 87724(f)(9) is renumbered to Section 87724(l)(8) for numerical consistency.

Section 87725 (Title)

Specific Purpose:

The specific purpose of this regulation is to adopt a new section and title and to place into regulation the requirements for a licensee who advertises dementia special care, programming, and/or environments.

Factual Basis:

This regulation is necessary to implement Health and Safety Code Sections 1569.15(m), 1569.626 and 1569.627 that establish requirements for licensees of RCFEs that advertise dementia special care, programming, and/or environments. For ease of the reader and for clarity, a new section number is proposed to follow Section 87724, Care of Persons With Dementia. A new section number is proposed because Sections 87725, 87725.1, and 87725.2 pertain only to licensees who advertise dementia special care, programming, and/or environments. For consistency, all section numbers beginning with 87725 will pertain to licensees who advertise dementia special care, programming, and/or environments.

Section 87725(a)

Specific Purpose:

The specific purpose of adopting this section is to clarify that all licensees who meet the requirements in Section 87724 may provide dementia care. However, Section 87725 specifies that licensees who advertise, promote, or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders must meet the specified requirements in this section. The title for Section 87724 is provided.

Factual Basis:

This regulation is necessary because the Department wants to make it clear that all subsections under Section 87725 pertain only to licensees who advertise, promote, or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders. Clarification is also made that all licensees who meet the requirements in Section 87724 may provide dementia care. A title for Section 87724 is added for ease of use.

Section 87725(a)(1)

Specific Purpose:

The specific purpose of adopting this section is to clarify that a licensee who advertises or promotes dementia special care, programming, and/or environments must also comply with the requirements of Title 22, Division 6, Chapter 8 of the California Code of Regulations governing RCFEs.

Factual Basis:

This section is necessary so that the licensee who is advertising dementia special care, programming, and/or environments also follows all regulations for RCFEs that are in Title 22, Division 6, Chapter 8 of the California Code of Regulations. The Department wants to make it clear that even though Sections 87725, 87725.1 and 87725.2 pertain to a licensee who advertises dementia special care, programming, and/or environments, the general RCFE requirements must still be met.

Section 87725(a)(2)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to ensure that their direct care staff who provide care to any resident(s) with dementia meet the training requirements specified in Section 87725.1. The requirements specify that direct care staff receive six hours of resident care orientation within the first four weeks of employment and eight hours of in-service training per year on the subject of serving residents with dementia.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1569.626, which requires licensees who advertise dementia special care, programming, and/or environments to meet specified training requirements for all direct care staff. Statute requires six hours of resident care orientation within the first four weeks of employment and eight hours of in-service training per year on the subject of serving residents with dementia. The training requirements for direct care staff are specified in Section 87725(a)(2) for emphasis because all the requirements that must be met in order for a licensee to advertise or promote dementia special care, programming, and/or environments are explained altogether in Section 87725 for easy reference. The specifics pertaining just to the training requirements if a licensee is advertising dementia special care, programming, and/or environments are all under Section 87725.1.

Section 87725(a)(2)(A)

Specific Purpose:

The specific purpose of adopting this section is to clarify that the term “direct care staff” excludes staff used only for staff mealtime and break relief.

Factual Basis:

This section is necessary to clarify which staff are considered direct care staff and therefore must meet the training requirements in Section 87725.1 if the licensee advertises dementia special care, programming, and/or environments. The Department does not require staff to meet the training requirements under Section 87725.1 unless their primary role is to provide direct care to residents with dementia. This section is consistent with Section 87580(a)(1) that requires coverage when regular staff members are absent. Staff who take the place of direct care staff who are away from the facility for reasons such as illness, vacation, or appointments are providing care and supervision and should be trained. Staff used to relieve other staff who are on breaks or having a meal are only helping out for short intervals. The regular staff would be back shortly.

Section 87725(a)(2)(B)

Specific Purpose:

The specific purpose of adopting this section is to clarify that if a licensee is advertising or promoting dementia special care, programming, and/or environments, then direct care staff must meet the training requirements in Section 87725.1 and these direct care staff may provide dementia special care to residents in the facility (itself) or in designated areas of the facility.

Factual Basis:

This section is necessary to provide further clarification for direct care staff who are providing dementia special care and must meet the training requirements in Section 87725.1 because the licensee is advertising dementia special care, programming, and/or environments. For clarity, language specifies that care for residents with dementia may be provided by direct care staff in an entire facility, or it may be provided in a designated area of a facility. Examples of a designated area of a facility may include another wing, floor, or building on the premises.

Section 87725(a)(3)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to not only meet the requirements specified in Sections 87222 and 87724(b) pertaining to the plan of operation, but also to submit a description of specified facility features as they relate to dementia special care. These facility features are described in sections following Section 87725(a)(3).

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627 that specify which facility features must be addressed in the plan of operation. If the licensee already has a plan of operation, then these features have to be submitted to the licensing agency as an addendum to the existing plan of operation. New licensees who know that they are going to advertise dementia special care, programming, and/or environments must put the description of the facility features in the original plan of operation.

Section 87725(a)(3)(A)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to describe their philosophy in the plan of operation that must include, but not be limited to, a description of the program goals/objectives in relation to meeting the needs of residents with dementia.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(a), requiring the information in a facility's plan of operation to include a brief narrative description of the philosophy, including, but not limited to, program goals. The term "objectives" is included for clarity.

Section 87725(a)(3)(B)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to describe in the plan of operation the pre-admission assessment that is used in the facility. The licensee must include a description of the types of assessment tools used to determine residents' dementia care needs and describe who will participate in the assessment.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(b), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose to the Department the special features of the facility in its plan of operation. The information shall include a brief narrative description of the pre-admission assessment. The plan of operation will be available to the public upon request as it is important for residents and their family or responsible persons to know what types of assessment tools will be used to determine the care needs and to learn who will participate in the assessment. There are many types of assessment tools. In addition, many people could participate in the assessment including the resident, family, responsible person, conservator, physician, staff, and the licensee.

Sections 87725(a)(3)(C) through (a)(3)(C)3.

Specific Purpose:

The specific purpose of adopting these sections is to require licensees to describe specific features in their plan of operation that must be in place upon admission of a resident who requires dementia special care. The licensee must specify designated areas in the facility where dementia special care is provided, which may be the entire facility, or only parts of it. The licensee must describe services provided to residents with dementia, including such services as hospice care (if allowable) and a description of how costs for these services are determined. Lastly, the licensee must describe procedures that are in place to ensure that the plan of operation will be made available for review upon request as required by Section 87725(a)(4).

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(c), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose to the Department the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the admission process and a description of items that must be addressed when admitting a resident who requires dementia special care. The Department is requiring a description of specific items that would be important for the public to know and that should be described in the plan of operation. The Department and the public need to know which areas of the facility a resident with dementia will have access. It is important for the public and the Department to know what services the licensee will provide residents with dementia.

Sometimes when a condition changes, the resident and the responsible person, if any, or the conservator are unaware that the licensee will not allow a specific health condition in the facility or that the costs are high for certain health conditions. Lastly, statute requires that licensees have procedures to ensure that the plan of operation is available to the public. Section 87725(a)(4) requires that the plan of operation be referred to in the admission agreement.

Sections 87725(a)(3)(D) through (a)(3)(D)3.

Specific Purpose:

The specific purpose of adopting these sections is to require licensees to include in their plan of operation a description of various aspects about assessments in relation to residents receiving dementia special care. Licensees must describe the types of assessments used, who will participate in resident assessments, what procedures are in place for ensuring the opportunity for resident and family involvement in these assessments, and what is the frequency of the assessments.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(d), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to assessments and how the specified items on assessments are used in relation to residents receiving dementia special care. There are many different kinds of assessment tools with no consensus about any of them, so it is important that this information be included in the plan of operation. The workgroup was divided on assessment frequency and tools to use, but was concerned that the resident and family should be given the opportunity to be involved in the assessment.

Sections 87725(a)(3)(E) through (a)(3)(E)3.(i)

Specific Purpose:

The specific purpose of adopting these sections is for licensees to describe in the plan of operation certain aspects of their activity plan/program for residents with dementia. The licensee must include, but is not limited to, the types of activities provided; the frequency of the activities; and the process the licensee will use to determine the types of activities that must be planned to encompass residents' needs. Clarification is provided to the licensee to show examples of different types of activities that could be provided to the resident and examples of types of things that the resident's needs could be based upon.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(e), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the program in relation to residents receiving dementia special care. It is important to know the types of activities that the licensee offers, how often the activities are provided and how the licensee determines what types of activities shall be planned to meet all of the residents' needs. The Department provides a broad list of activities for clarification and to inform the licensee of the types of activities available. This list was developed after reviewing other states' assisted living regulations, including Virginia (Virginia Department of Social Services, Standards and Regulations for Licensed Adult Care Residences, 22 VAC 40-71-260 and 40-71-700); Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, pages 4, 11, and 12); Maine (Regulations Governing the Licensing and Functioning of Assisted Living Facilities, Chapter 4, Level II, 27050-27100); and Texas (Texas Department of Human Services, Licensing Standards for Assisted Living Facilities, 92.53(g)). The Department reviewed regulations from North Carolina (Rules for the Licensing of Adult Care Homes, Title 10, Subchapter 42C and D, .1905 and .2005) and Mississippi (Summary of Alzheimer's Disease/Dementia Care Unit, Regulations Changes, Draft 3.0, 104.1) for further insight into activity programs, including a requirement for licensees to describe their process for determining what types of activities shall be planned to encompass the residents' needs. The Department provides a list of things that the licensee can use to determine the activities needed to meet the residents' needs. This list provides further clarification and information to assist the licensee.

Section 87725(a)(3)(F)

Specific Purpose:

The specific purpose of adopting this section is for the licensee to describe experience and educational qualifications (if any) for direct care staff who provide dementia special care.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(f), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the staff who provide dementia special care. The requirements in this section are in addition to the personnel requirements in Section 87565. The Department specifies that direct care staff who provide dementia special care must meet the requirements in Section 87725(a)(2) which clarifies the training requirements that are necessary and further clarifies who direct care staff are and where they work. This section requires licensees to specify in their plan of operation any experience and educational qualifications that they require (if any), which are in addition to those requirements specified in Section 87725(a)(2).

Sections 87725(a)(3)(G) and (a)(3)(G)1.

Specific Purpose:

The specific purpose of adopting these sections is for the licensee to provide a statement in the plan of operation indicating that direct care staff who provide dementia special care shall meet the training requirements under Section 87725.1, Training Requirements If Advertising Dementia Special Care, Programming, and/or Environments. In addition to the training requirements under Section 87725.1, the licensee shall describe any other training requirements for direct care staff.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(g), requiring that any RCFE advertising dementia special care must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to training for direct care staff who provide dementia special care. The licensee is required to meet all of the training requirements in Section 87725.1. This section clarifies that there are special training requirements. The subject matter, trainer/consultant qualifications, and documentation requirements are already specified in Section 87725.1. The Department does not want an exact description of the training in the plan of operation because this may change for every training the licensee provides, and the Department does not want the licensee to unnecessarily have to keep revising the plan of operation. Section 87725(a)(3)(G)1. also specifies that in addition to the training requirements under Section 87725.1, the licensee may describe any other training requirements that direct care staff will receive. This gives licensees a chance to describe additional training requirements they may require that go beyond statutory/regulatory requirements. This additional training may enable staff to better meet the needs of residents with dementia.

Sections 87725(a)(3)(H) and (a)(3)(H)1.

Specific Purpose:

The specific purpose of adopting these sections is for the licensee to describe in the plan of operation the environmental factors in the facility that ensure a safe, secure, familiar and consistent environment for residents with dementia. A list of these environmental factors is provided for the licensee's consideration.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(h) requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to the physical environment. This environment should promote mobility. The licensee must ensure that the resident is safe from falls and from wandering away by utilizing such measures as handrails and secured perimeters. A resident with dementia is often confused and needs to

feel secure in the environment with familiar things. Sudden change causes confusion. A list of environmental factors that a licensee could consider is included to provide clarity. Ideas for environmental factors came from a review of other states' assisted living regulations, including North Carolina (Rules for the Licensing of Adult Care Homes, Title 10, Subchapter 42C and D, .1503); Oregon (Oregon Administrative Rules, Indorsement of Alzheimer's Care Units, 411-057-0040); Virginia (Virginia Department of Social Services, Standards and Regulations for Licensed Adult Care Residences, 22 VAC 40-71, pages 57, 61, and 62); Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, 4.); and Mississippi (Summary of Alzheimer's Disease/Dementia Care Unit, Regulation Changes, Draft 3.0, 107.1, and 107.2).

Sections 87725(a)(3)(I) through (a)(3)(I)4.

Specific Purpose:

The specific purpose of adopting these sections is for the licensee to describe in the plan of operation the procedures that are in place when a resident with dementia has a change in his/her condition. Procedures that must be followed when a resident's condition changes, include, but are not limited to, an explanation of the following: 1) when a new care plan is required; 2) at what point a physician (if any) is involved in developing a care plan; 3) the special techniques/programs (if any) used for managing specific types of behavior; and 4) the conditions that would require a resident to be relocated to a more secure environment (e.g. delayed egress and/or secured perimeters).

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(i), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description of the licensees' procedures when the resident shows a change in his/her health condition. The workgroup brought up issues that the Department considers important to be addressed in the plan of operation for the resident and responsible person (if any), or conservator. It is important to know when the licensee requires a new care plan and if the licensee will have a physician involved in developing a care plan for the resident. The licensee needs to explain any special techniques or programs (if any) used for managing specific types of behaviors, which may include such things as special activities, communication, personal intervention, a change of schedule for the resident, and creating a therapeutic environment. The licensee also needs to explain in the plan of operation the conditions that a resident may exhibit that would require a resident to be relocated to a more secure environment, which may include such things as delayed egress and secured perimeters.

Sections 87725(a)(3)(J) through (a)(3)(J)3.(i)

Specific Purpose:

The specific purpose of adopting these sections is to require the licensee to describe in the plan of operation the success indicators that are in place, including procedures 1) to ensure an ongoing review of facility programs pertaining to care of residents with dementia; 2) to make necessary adjustments to better meet residents' needs; and 3) to assess the program's overall effectiveness/success. Also provided are examples of areas that may be reviewed by the licensee to assess the program's effectiveness/success.

Factual Basis:

These sections are necessary to implement Health and Safety Code Sections 1569.15(m) and 1569.627(j), requiring that any RCFE advertising dementia special care, programming, and/or environments must disclose the special features of the facility in its plan of operation. The information shall include a brief narrative description pertaining to success indicators to determine whether the licensee is meeting the needs of the residents with dementia. The licensee must provide a description of procedures to ensure an ongoing review of facility programs pertaining to care of residents with dementia. Based on the needs of the resident, the licensee must make necessary adjustments to better meet residents' needs. The licensee must describe what procedures are used to determine the program's overall effectiveness and success in meeting the residents' needs. For clarification, examples are provided of areas that licensees may consider to determine their program's effectiveness.

Section 87725(a)(4)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to include in the admission agreement, as specified in Section 87568(e), language that informs the resident and the responsible person, if any, or the conservator, that the licensee's facility features, as specified in Section 87725(a)(3), are described in the plan of operation and are available for review upon request.

Factual Basis:

This section is necessary to ensure that the admission agreement language informs the resident and the responsible person, if any, or conservator, that the licensee's services, programs, and environments specific to specialized dementia care are described in the plan of operation and are available for review upon request. Workgroup participants wanted this informing language to be in the admission agreement because that document must be read, signed and dated prior to admittance and must be retained in the resident's file. Section 87568(f)(1) specifies that the licensee shall provide a copy of the current admission agreement to the resident and the responsible person, if any, or the conservator.

Reference to Section 87568(e) is added, which provides additional requirements for the admission agreement to avoid the redundancy of repeating that regulation.

Sections 87725(a)(5)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to maintain copies of all facility advertisements and marketing/promotional material that indicate the licensee provides special care, programming and/or environments for residents with dementia or related disorders. In addition, the licensee shall maintain the information for a minimum of three years following discontinuance.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1569.33(d), requiring the Department to review the plan of operation, training logs, and marketing materials of an RCFE that advertises dementia special care, programming, and/or environments in order to monitor compliance with Health and Safety Code Sections 1569.626 and 1569.627. The requirement for the licensee to maintain the information for a minimum of three years following discontinuance is consistent with current regulation Section 87570(d).

Section 87725(a)(5)(A)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to have all facility advertisements and marketing/promotional material, which indicate that the licensee provides dementia special care, programming, and/or environments, available to the public upon request.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1569.627 that specifies that the licensee of any RCFE that advertises or promotes dementia special care, programming, and/or environments shall ensure that this advertising information is provided to the public upon request.

Section 87725(a)(5)(B)

Specific Purpose:

The specific purpose of adopting this section is to specify that the licensing agency shall be entitled to inspect, audit, remove if necessary, and copy upon demand during normal business hours all facility advertisements and marketing/promotional material that indicate the licensee provides dementia special care, programming, and/or environments.

Factual Basis:

This section is necessary because the licensing agency's access to facility advertisements and marketing/promotional material is necessary to carry out the functions of the licensing program. This language is consistent with Section 87570(e) pertaining to resident records.

Section 87725(b)

Specific Purpose:

The specific purpose of adopting this regulation is to specify the necessary requirements for licensees who will discontinue advertising, promoting, or otherwise holding themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders.

Factual Basis:

This regulation is necessary because Health and Safety Code Sections 1569.626, 1569.627, 1569.15(m), and 1569.33(d) establish requirements for licensees of RCFEs advertising dementia special care, programming, and/or environments. Since requirements are in place, licensees need regulations when discontinuing advertising dementia special care. The training requirements in Section 87725.1 and the requirements for the plan of operation in Section 87725(a)(3) will no longer be required if the licensee is no longer advertising or promoting dementia special care. This is a change from what was in the plan of operation that was referred to in the admission agreement. Licensees must inform the licensing agency of changes in their plan of operation, as specified in Section 87222. Therefore, the public and the licensing agency must be informed about a discontinuance of advertising dementia special care.

Section 87725(b)(1)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to provide written notification to the licensing agency and to the resident and the responsible person, if any, or the conservator, at least 30 calendar days prior to discontinuing advertising or promoting dementia special care, programming, and/or environments.

Factual Basis:

This section is necessary because the resident and the responsible person, if any, or conservator, have a right to know if the licensee chooses to discontinue advertising dementia special care, programming, and/or environments. Discontinuing advertising means the licensee is no longer required to include a brief narrative description of all the facility features pertaining to dementia special care in the plan of operation, as specified in Section 87725(a)(3). In addition, the licensee will no longer be required to have direct care staff meet the training requirements in Section 87725.1. The 30 calendar days notice is

consistent throughout existing regulations, such as Sections 87561(b), 87568(c)(4), and 87113(c). "Calendar" days provides clarity.

Section 87725(b)(1)(A)

Specific Purpose:

The specific purpose of this section is to require licensees to state in their notification that they will no longer be advertising or promoting dementia special care, programming, and/or environments. Therefore, the licensee will no longer be required to meet the requirements in Section 87725, including the plan of operation requirements and the training requirements in Section 87725.1.

Factual Basis:

This section is necessary to clarify what the licensee must include in the required notification specified in Section 87725(b)(1). It is important that the licensee informs the licensing agency and the resident and the responsible person, if any, or the conservator of any changes. Licensees are required to inform the licensing agency of changes in their plan of operation, as specified in Section 87222. Discontinuing advertising means it is no longer a requirement for the licensee to include a brief narrative description of all the facility features pertaining to dementia special care in the plan of operation, as specified in Section 87725(a)(3). In addition, the licensee will no longer be required to have direct care staff meet the training requirements in Section 87725.1.

Section 87725(b)(1)(B)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to maintain a copy of the written notification, specified in Section 87725(b)(1), in each resident's records.

Factual Basis:

This section is necessary to meet the current regulation requirements on maintaining records. The written notification must contain information pertaining to any changes to the plan of operation and specify that training will no longer be required; therefore, the notification must be maintained in the resident's records. Section 87570 on resident records requires records to be current and complete and maintained in the facility or in a central administrative location available to facility and Department staff. Section 87570(b)(13) includes the admission agreement among those records. Section 87222 specifies that a current plan of operation shall be on file in the facility and shall be submitted to the licensing agency for approval.

Sections 87725(b)(2) and (b)(2)(A)

Specific Purpose:

The specific purpose of adopting these sections is to specify certain requirements for licensees who will discontinue advertising, promoting, or otherwise holding themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders. Within 30 calendar days from notifying the licensing agency and the resident and the responsible person, if any, or the conservator, the licensee shall cease all advertisements pertaining to dementia special care and remove all written references that indicate that the licensee provides dementia special care, programming and/or environments. These references shall be removed from all promotional material, advertisements, and/or printed material, including admission agreements and the plan of operation.

Factual Basis:

These sections are necessary to ensure that licensees have procedures in place when choosing to discontinue advertising dementia special care, programming, and/or environments. Licensees cannot advertise anything they are no longer doing. Section 87725(b)(2)(A) clarifies that the written references indicating the licensee provides dementia special care, programming, and/or environments must be removed when the licensee discontinues advertising and the regulation gives examples of documents from which these references must be removed. The Department proposes that within 30 calendar days from notifying the licensing agency and the resident and the responsible person, if any, or the conservator, the licensee shall cease all advertisements pertaining to dementia special care and remove all written references that indicate that the licensee provides dementia special care, programming, and/or environments. The 30 calendar days timeframe is used for consistency and has been used throughout the RCFE regulations in various sections, such as 87701.5(h), 87568(c)(4), and 87564.2(b)(3).

Section 87725.1 (Title)

Specific Purpose:

The specific purpose of this regulation is to adopt a new section and title and to add the training requirements for a licensee who is advertising dementia special care, programming, and/or environments.

Factual Basis:

This regulation is necessary to implement Health and Safety Code Section 1569.626 that establishes training requirements for direct care staff. The title clearly explains that Section 87725.1 is about training requirements that are only applicable if a licensee is advertising dementia special care, programming, and/or environments.

Section 87725.1(a)

Specific Purpose:

The specific purpose of adopting this regulation is to specify that licensees who advertise, promote, or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia or related disorders shall ensure that all direct care staff, described in Section 87725(a)(2), who provide care to residents with dementia, meet certain training requirements.

Factual Basis:

This regulation is necessary to make it clear that all subsections under Section 87725.1(a) pertain only to training requirements for direct care staff if the licensee is advertising dementia special care, programming, and/or environments. This section is necessary to carry out Health and Safety Code Sections 1569.626 and 1569.33(d). Reference to Section 87725(a)(2) further clarifies and describes who direct care staff are and where they work.

Section 87725.1(a)(1)

Specific Purpose:

The specific purpose of adopting this section is for the licensee to ensure that direct care staff complete six hours of orientation specific to the care of residents with dementia within the first four weeks of working in the facility, or in designated areas of the facility where dementia special care is provided.

Factual Basis:

This section is necessary to meet the requirements in Health and Safety Code Section 1569.626(a), requiring six hours of resident care orientation within the first four weeks of employment. This section also clarifies that dementia care may take place in an entire facility or in a designated area of the facility, such as another building, wing, or floor.

Sections 87725.1(a)(1)(A) through (a)(1)(A)2.

Specific Purpose:

The specific purpose of adopting these sections is to specify that the six hours of orientation for direct care staff shall be repeated if either of two circumstances occurs. The orientation must be repeated if an employee: (1) returns to work for the same licensee after a break in service of more than sixty consecutive calendar days or, (2) goes to work for another licensee to provide dementia special care.

Factual Basis:

These sections are necessary so that the licensee will know if direct care staff must repeat the six hours of orientation specific to care of residents with dementia. If an employee has a break in service of more than sixty consecutive calendar days and returns to work for the same licensee, the orientation must be repeated to provide an opportunity to be refreshed on what was taught earlier. If an employee goes to work for another licensee to provide dementia special care, he/she must complete the new facility's orientation to learn about the operation in a new facility and become acquainted with the care of residents in that particular facility.

Section 87725.1(a)(1)(B)

Specific Purpose:

The specific purpose of adopting this section is to specify that six hours of orientation for direct care staff shall be separate from other training and be exclusively on the care of residents with dementia.

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(a), requiring the orientation time to be exclusive of any administrative instruction so that all six hours shall be devoted to the care of residents with dementia. This training is separate from other training requirements.

Sections 87725.1(a)(1)(C) and (a)(1)(C)1.

Specific Purpose:

The specific purpose of adopting these sections is to specify that the licensee may use various methods for instructing direct care staff on the six hours of orientation specific to residents with dementia, including, but not limited to the following: presenters knowledgeable about dementia, video instruction tapes, interactive material, books, and/or other materials approved by organizations or individuals specializing in dementia. This instruction may include up to two hours of mentoring and hands-on training from direct care staff who have met the training requirements specified in Section 87725.1.

Factual Basis:

These sections are necessary to comply with Health and Safety Code Section 1569.626(a) permitting the facility to utilize various methods of instruction including, but not limited to, preceptorship, mentoring, and other forms of observation and demonstration. Licensees may choose the training materials that work best for them. The Department proposes a cap of two hours on mentoring and hands-on training from direct care staff who have already met the training requirements.

Section 87725.1(a)(2)

Specific Purpose:

The specific purpose of adopting this section is to specify that licensees who advertise dementia special care, programming, and/or environments must ensure that all direct care staff shall complete at least eight hours of in-service training on the subject of serving residents with dementia, within twelve months of working in the facility, or in designated areas of the facility where dementia special care is provided, and in each succeeding twelve-month period. Direct care staff hired prior to the effective date of Section 87725.1 shall complete the eight hours of in-service training within twelve months of this date and in each succeeding twelve-month period.

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(b) that requires all RCFE licensees who advertise dementia special care, programming, and/or environments to ensure that direct care staff who provide dementia special care meet the yearly eight hours of in-service training requirements on the subject of serving residents with dementia. Direct care staff don't have to have the training required in Section 87725.1 unless they actually provide care for residents with dementia and the licensee is advertising dementia special care, programming, and/or environments. Direct care staff must complete the eight hours of in-service training on the subject of serving residents with dementia within twelve months of working in the facility, or in designated areas of the facility where dementia special care is provided, and every twelve months thereafter.

The Department is also clarifying procedures for direct care staff who have been providing such care before Sections 87725 and 87725.1 become effective and who are working for a licensee who is advertising dementia special care, programming, and/or environments. The Department's implementation plan for AB 1753 (Romero, Chapter 434, Statutes of 2000), effective July 1, 2001, requires new direct care staff that provide dementia special care to receive six hours orientation and eight hours of in-service training on serving residents with dementia if the RCFE licensee advertises dementia special care, programming, and/or environments. Direct care staff who have provided such care prior to this implementation plan must also receive the required training. Therefore, proposed language clarifies when these individuals must be trained. This gives the licensing agency a timeframe to ensure that all direct care staff are trained if the direct care staff are working in the facility, or in designated areas of the facility where dementia special care is provided; the licensee is advertising dementia special care, programming, and/or environments; and if direct care staff were hired prior to the effective date of Section 87725.1. This will prevent the licensing agency from having to calculate partial training hours that direct care staff received prior to the effective date of these regulations since those training hours were general and unlike the training regulations proposed in Section 87725.1.

Sections 87725.1(a)(2)(A) through (a)(2)(A)6.

Specific Purpose:

The specific purpose of adopting these sections is to specify that annually the licensee must ensure that the eight hours of in-service training for direct care staff includes a minimum of two of the training topics, specified in Sections 87725.1(a)(2)(A)1. through (a)(2)(A)6., but all topics must be covered within a three-year period. Topics include the following: effects of medications on the behavior of residents with dementia; common problems such as wandering, aggression, and inappropriate sexual behavior; positive therapeutic interventions and activities such as exercise, sensory stimulation, activities of daily living, and social, recreational and rehabilitative activities; communication skills including resident and staff relations; promoting resident dignity, independence, individuality, privacy and choice; and end of life issues, including hospice.

Factual Basis:

These sections are necessary to ensure that the eight hours of in-service training per year on the subject of serving residents with dementia, as required by Health and Safety Code Section 1569.626(b), include some of the more important topics concerning dementia special care. The statute requires consultants and trainers to have some expertise on dementia special care. The topics specified in Section 87725.1(a)(2)(A) are meant to go into greater detail than the training required by Sections 87565(c) and 87724(c)(3). The Department reviewed training topics from other states' regulations on dementia in assisted living facilities. These states include Virginia (Virginia Department of Social Services, Standards and Regulations for Licensed Adult Care Residences, 22 VAC 40-71, pages 57, 60, and 61); Maine (Regulations Governing the Licensing and Functioning of Assisted Living Facilities, Chapter IV, Level II, 29070); Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, pages 7, 14, 15, and 16); Idaho (Rules for Licensed Residential and Assisted Living Facilities in Idaho, 16.03.22-05, -06, and -07); and Arizona (Arizona Department of Health Services Regulations, Title 9, Chapter 10, Article 7, R9-10-707). Ideas also came out of the dementia forum workgroup and research on Alzheimer's Disease and dementia. The Department believes that it is reasonable for all of the topics listed to be covered in a three-year period. Direct care staff should understand how dementia progresses and the changes a resident will have as his/her condition worsens.

Section 87725.1(a)(2)(B)

Specific Purpose:

The specific purpose of adopting this section is to inform the licensee that training may be provided at the facility or offsite and may include a combination of observation and practical application.

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(b), which permits the training for direct care staff to be provided at the facility or offsite and allows this training to include a combination of observation and practical application. This training is required if a licensee advertises dementia special care, programming, and/or environments.

Section 87725.1(a)(2)(C)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to ensure that the training is developed by, or in consultation with, individuals or organizations with expertise in dementia care and with knowledge on the training topic areas specified in Section 87725.1(a)(2)(A).

Factual Basis:

This section is necessary to comply with Health and Safety Code Section 1569.626(b) which requires that the training for direct care staff is developed in consultation with individuals or organizations or by an outside source with expertise in dementia care. For clarity, reference is made to the required training topics that are specified in Section 87725.1(a)(2)(A). Since these topics are required, the individuals/organizations must have knowledge about these topics in order for training to be developed. Trainers or consultants must have expertise in dementia care. Educational qualifications are specified in Section 87725.1(a)(2)(E) for trainers. Trainers must be able to present the material and answer questions. Consultants may be phoned informally and may be from an organization specified in Section 87725.1(a)(2)(C)1. Their organization affiliation and/or educational and professional qualifications specific to dementia will be documented as specified in Section 87725.1(a)(2)(D)3.

Section 87725.1(a)(2)(C)1.

Specific Purpose:

The specific purpose of adopting this section is to provide some examples of organizations or individuals that specialize in dementia care so that licensees who advertise dementia special care, programming, and/or environments can utilize these organizations/individuals for consultation, if they choose, to meet the training requirements in Section 87725.1(a)(2).

Factual Basis:

This section is necessary to provide information to the licensees so that they can meet the training requirements specified in Section 87725.1(a)(2). Health and Safety Code Section 1569.626(b) requires dementia training to be developed in consultation with individuals or organizations or by an outside source with expertise in dementia care. Providing a list of organizations will assist the licensee. The implementation plan for AB 1753 (Romero),

Chapter 434, Statutes of 2000, became effective on July 1, 2001, which licensing staff are required to implement until final regulations are issued. The examples provided in Section 87725.1(a)(2)(C)1. mirror that plan.

Sections 87725.1(a)(2)(D) through (a)(2)(D)3.

Specific Purpose:

The specific purpose of adopting these sections is to require the licensee to maintain specified documentation for the consultant(s) described in Section 87725.1(a)(2)(C). This documentation includes the following: the name, address, and telephone number of the consultant(s); the date(s) when consultation was provided; and the organization affiliation (if any), which was specified in Section 87725.1(a)(2)(C)1. and/or educational and professional qualifications specific to dementia.

Factual Basis:

These sections are necessary to be consistent with other record-keeping requirements. Health and Safety Code Section 1569.33(d) requires the Department to review training logs of any RCFE that advertises dementia special care, programming, and/or environments. Health and Safety Code Section 1569.626(b) requires training to be developed in consultation with individuals or organizations with specific expertise in dementia care. Therefore, it is important to have documentation on the consultant's organization affiliation and/or educational and professional qualifications specific to dementia. The Department is proposing that licensees maintain certain basic information about consultants to ensure requirements are being met. The name, address, and telephone number will allow the licensing agency to contact the consultant to verify information. The dates are necessary for the licensee to calculate the documentation retention timeframe proposed in Section 87725.1(a)(2)(G) and to make sure the dates correspond with training. For clarification and ease of use a cross-reference is made to Section 87725.1(a)(2)(C)1., which gives examples of organizations that specialize in dementia care and a cross-reference is made to Section 87725.1(a)(2)(C), which provides more information on who could develop or provide consultation for the training.

Section 87725.1(a)(2)(E)

Specific Purpose:

The specific purpose of adopting this section is to require licensees to ensure that trainer(s), who will be providing the eight hours of in-service training on the subject of serving residents with dementia to direct care staff, complete a minimum of three units on psychology of aging.

Factual Basis:

This section is necessary so that the qualifications for the trainer(s) are specified. Specific qualifications are necessary for the licensing agency to ensure that regulations are followed. This section is necessary to comply with Health and Safety Code Section 1569.626(b), that requires the training for direct care staff to be developed in consultation with individuals or organizations or by an outside source with expertise in dementia care. A psychology of aging class is included in the transcripts of anyone obtaining a two-year degree or a two-year certificate in the field of gerontology. This class is easily accessible statewide and is on line nationwide for \$33.

Section 87725.1(a)(2)(E)1.

Specific Purpose:

The specific purpose of adopting this section is to specify that a licensee and/or employee(s) of the facility may provide the eight hours of in-service training on the subject of serving residents with dementia to direct care staff if he/she has a minimum of three units on psychology of aging.

Factual Basis:

This section is necessary to clarify that a licensee and/or employee(s) of an RCFE may provide the training for dementia special care if he/she has completed a minimum of three units on psychology of aging. Licensees who specialize in caring for residents with dementia may already have hired staff who have a minimum of three (3) units on psychology of aging for the purpose of developing training and enhancing programs and policies. The workgroup commented that it was acceptable for a licensee and/or employee(s) of an RCFE to provide training as long as they have some expertise on dementia special care.

Sections 87725.1(a)(2)(F) through (a)(2)(F)4.

Specific Purpose:

The specific purpose of adopting these sections is to require licensees to maintain specified documentation for the trainer(s) described in Section 87725.1(a)(2)(E). The documentation must include the following: the name, address, and telephone number of the trainer(s); the topics/subject matter taught; the dates/hours of training provided; and an official transcript from an accredited educational facility showing three (3) completed units on psychology of aging.

Factual Basis:

These sections are necessary to ensure that licensees maintain specified documentation for the trainer(s) described in Section 87725.1(a)(2)(E) and to be consistent with other record-keeping requirements, including proposed Section 87725.1(a)(2)(D). Health and Safety Code Section 1569.33(d) requires the Department to review training logs of any RCFE that

advertises or promotes dementia special care. Health and Safety Code Section 1569.626(b) requires training to be developed in consultation with individuals or organizations with specific expertise in dementia care. The Department is proposing that licensees document some basic information for the trainer(s) to ensure that requirements are being met.

Other states' assisted living regulations were reviewed, including Washington (Dementia Care Pilot & Expansion Projects in Boarding Homes, Exhibit A, J) and Arizona (Arizona Department of Health Services Regulations, Title 9, Chapter 10, Article 7, R9-10-706), for ideas for documentation of training. Since the Department is proposing that the trainers complete three units on psychology of aging, then there needs to be documentation showing an official transcript from an accredited educational facility showing these completed units. A name, address, and telephone number will allow the licensing agency to contact the trainer with questions. The licensing agency can verify that the topics/subject matter correspond with those proposed in Section 87725.1(a)(2)(A). In addition, the licensing agency can verify that the dates correspond with the documentation in the employees' training files and that the hours meet the requirements in Section 87725.1(a)(2). The dates/hours of training provided will help the licensee calculate the documentation retention timeframe as proposed in Section 87725.1(a)(2)(G).

Section 87725.1(a)(2)(G)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to retain the documentation specified in Sections 87725.1(a)(2)(D) and (a)(2)(F) for a minimum of three years after the date consultation services/training are provided.

Factual Basis:

This section is necessary for consistency with current Sections 87566(e) (personnel records) and 87570(d) (resident records). Reference to Sections 87725.1(a)(2)(D) and 87725.1(a)(2)(F) specifies which documents must be retained. These sections refer to documentation that shows the dates the consultation services/training was provided. That gives a beginning date so that the licensee will know when the three-year retention period for document maintenance begins.

Section 87725.1(a)(2)(G)1.

Specific Purpose:

The specific purpose of adopting this section is to specify that the licensing agency shall be entitled to inspect, audit, remove if necessary, and copy the documentation specified in Sections 87725.1(a)(2)(D) and (a)(2)(F) upon demand during normal business hours.

Factual Basis:

This section is necessary because the licensing agency's access to documentation pertaining to training is necessary to carry out the functions of the licensing program. The language is

consistent with Section 87570(e) pertaining to resident records and provides clarity. Sections 87725.1(a)(2)(D) and (a)(2)(F) are cross-referenced in Section 87725.1(a)(2)(G) to indicate the type of training documentation that must be retained to show that the licensee has met the statutory and regulatory requirements.

Section 87725.1(a)(2)(H)

Specific Purpose:

The specific purpose of adopting this section is to require the licensee to maintain the documentation verifying completion of the training required by Section 87725.1 in the personnel records for direct care staff, as required by Section 87566(b).

Factual Basis:

This section is necessary to ensure that the licensee documents the completion of the required training for dementia special care in the personnel records for direct care staff so that the licensing agency can verify that training requirements are being met. Reference to Section 87725.1 clarifies the training requirements for a licensee who advertises dementia special care, programming, and/or environments. For further clarification, the Department makes reference to Section 87566(b), which lists the specific information that must be included in the personnel records as documentation to verify completion of the required training.

Section 87725.2 (Title)

Specific Purpose:

The specific purpose of this regulation is to adopt a new section and title so that the Department can place into regulation the requirements for licensees to follow if they are already advertising dementia special care, programming, and/or environments upon the effective date of these regulations.

Factual Basis:

This regulation is necessary to provide the licensees with a timeframe to meet the requirements of Health and Safety Code Sections 1569.15(m), 1569.626 and 1569.627 if they advertise dementia special care, programming, and/or environments. For clarity, a new section number is adopted to deal specifically with licensees who are already advertising dementia special care, programming, and/or environments upon the effective date of regulation Sections 87725 and 87725.1. All section numbers beginning with Section 87725 pertain only to licensees who are advertising dementia special care, programming, and/or environments. In addition, the Department proposes one location in the regulations for the steps and timeframe for licensees who are already advertising dementia special care, programming, and/or environments upon the effective date of these regulations. This section can be removed 121 days from the date that these regulations become effective because this section will no longer be pertinent; the regulations in Sections 87725 and 87725.1 will stand alone at that time.

Section 87725.2(a)

Specific Purpose:

The specific purpose of adopting this section is to specify that licensees who will no longer advertise, promote, or otherwise hold themselves out as providing dementia special care, programming, and/or environments shall meet all of the requirements of Section 87725(b) within 120 calendar days from the effective date of Sections 87725 and 87725.1.

Factual Basis:

This section is necessary because when these regulations become effective, they will impact licensees who are already advertising dementia special care, programming, and/or environments. Some timeframe must be in place to allow licensees to meet the requirements in Sections 87725 and 87725.1. Without time to meet the requirements, the regulations would cause undue hardship for licensees. Since licensees will learn about the requirements of Sections 87725 and 87725.1 upon the effective date of these regulations, they will not have time to prepare in advance to meet these requirements. Also, licensees may not have access to these new regulations immediately. Section 87725.2 ensures there is a firm timeline for the licensing agency to enforce the regulations as the licensee must meet all of the requirements of Section 87725(b) within 120 calendar days from the effective date of Sections 87725 and 87725.1.

The licensee may make a decision to quit advertising after he/she becomes aware of the additional requirements specified in Sections 87725 and 87725.1. Additional requirements are proposed for licensees who want to advertise dementia special care, programming, and/or environments.

The implementation plan for AB 1753 (Romero), Chapter 434, Statutes of 2000 was effective July 1, 2001. However, there were no guidelines in the implementation plan for licensees who decide to no longer advertise dementia special care, programming and/or environments.

Section 87725.2(b)

Specific Purpose:

The specific purpose of adopting this section is to specify that licensees who will continue to advertise, promote, or otherwise hold themselves out as providing dementia special care, programming, and/or environments shall meet the requirements in Sections 87725(a) and 87725.1 upon their effective date; however, exceptions are provided.

Factual Basis:

This section is necessary because when these regulations become effective, they will impact licensees who are already advertising dementia special care, programming, and/or environments. Some timeframe must be in place to allow licensees to meet the

requirements in Sections 87725(a) and 87725.1, because without additional time to meet the requirements, the regulations would cause undue hardship for the licensee. This section ensures there is a firm timeline for enforcement by the licensing agency.

The implementation plan for AB 1753 (Romero), Chapter 434, Statutes of 2000 was effective July 1, 2001. Additional requirements will be put into place with the adoption of Sections 87725 and 87725.1 for licensees who want to advertise dementia special care, programming, and/or environments. The licensee will need time to meet the regulatory requirements since these requirements were not addressed in the implementation plan and therefore, exceptions are being provided.

Sections 87725.2(b)(1) and (b)(1)(A)

Specific Purpose:

The specific purpose of adopting these sections is to require the licensee to submit to the licensing agency the additional requirements for the plan of operation that have not been submitted previously, as described in Section 87725(a)(3). The licensee must submit this information within 120 calendar days from the effective date of Sections 87725(a) and 87725.1.

Factual Basis:

These sections are necessary to allow the licensee additional time to meet the requirements in Section 87725(a)(3). It is not the intent of the Department to have the licensee do more work than is necessary. The licensee only needs to submit to the licensing agency the additional requirements for the plan of operation that are described in Section 87725(a)(3). These requirements are necessary as specified in Health and Safety Code Section 1569.627. The licensee who has been advertising dementia special care, programming, and/or environments upon the effective date of these regulations will have submitted a plan of operation, as specified in Section 87222. To meet statutory requirements in Health and Safety Code Section 1569.627, the licensee must submit a description of the facility features specified in Section 87725(a)(3).

Section 87725.2(b)(1)(B)

Specific Purpose:

The specific purpose of adopting this section is to ensure that within 120 calendar days from the effective date of Sections 87725(a) and 87725.1, the licensee shall amend the admission agreement to inform the resident and the responsible person, if any, or the conservator, that the facility features, as specified in Section 87725(a)(3), are described in the plan of operation, and are available for review upon request. This section specifies that requirements in Sections 87568(e) and (f) shall also be met.

Factual Basis:

This section is necessary to allow licensees more time to meet additional requirements if they are already advertising dementia special care, programming, and/or environments upon the effective date of regulation Sections 87725 and 87725.1. Proposed Section 87725(a)(4) specifies that the admission agreement shall inform the resident and the responsible person, if any, or the conservator, that the facility features, as specified in Section 87725(a)(3), are described in the plan of operation and are available for review upon request. The plan of operation must be current since it is referred to in the admission agreement and the resident and the responsible person, if any, or the conservator, can request to review it at any time. The proposed regulations allow the licensee an additional 120 calendar days timeframe to meet the requirements specified in this Section 87725.2(b)(1)(B) so that there will be no hardship for the licensee to meet these requirements. Health and Safety Code Section 1569.627 specifies that the special features of the facility in the plan of operation must be provided to the public by the facility upon request. Language specifies that requirements in Sections 87568(e) and (f) shall be met for clarification and to remove the need to repeat language already in the regulations pertaining to attachments or modifications of an admission agreement.

b) Identification of Documents Upon Which Department Is Relying

SB 1113 (Haynes) - enrolled (2000)

SB 1113 Senate Bill - Veto

Statement of Decision, California Assisted Living Facilities Association v. California Department of Social Services (CDSS); San Francisco Superior Court (1/29/01)

AB 1753 (Romero), Chapter 434, Statutes of 2000

AB 1753, CDSS Implementation Plan

State Assisted Living Policy: 2000, by Robert Mollica, p. 30

Arizona Department of Health Services Regulations, Title 9, Chapter 10, Article 7, pp. 50-51

Rules for Licensed Residential and Assisted Living Facilities in Idaho, p. 54

Regulations Governing the Licensing and Functioning of Assisted Living Facilities (Maine), pp. 71, 72, and 75

Summary of “Alzheimer’s Disease/Dementia Care Unit” (Mississippi), Regulation Changes; Draft 3.0, pp. 6 - 10

Rules for the Licensing of Adult Care Homes, Title 10, Subchapter 42C and D (N.Carolina), pp. 19 – 21, 32, and 36 - 37

Oregon Administrative Rules, Chapter 411, Division 057, Indorsement of Alzheimer’s Care Units, Sections -0000, -0010, and -0040

Texas Department of Human Services, Licensing Standards for Assisted Living Facilities, LS/ALF 98-3 and 01-1

Virginia Department of Social Services, Division of Licensing Programs, Standards and Regulations for Licensed Adult Care Residences, Sections 22/VAC 40-71-40, 40-71-260, and 40-71-700

Washington State Department of Social and Health Services, “Dementia Care Expansion Project: Standards of Care”, <http://www.aasa.dshs.wa.gov/professional/soc.htm> plus Exhibit A, pp. 8, and 4 – 16

c) Local Mandate Statement

These regulations do not impose a mandate upon local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

There are no known alternatives. These proposed regulations implement revised dementia care regulations as required by the Governor's veto message of SB1113 (Haynes) and Sections 1569.15(m), 1569.33, 1569.626, and 1569.627 [AB 1753 (Romero), Chapter 434, Statutes of 2001] of the Health and Safety Code.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.